

Service Date: May 26, 2005

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF the Application)	UTILITY DIVISION
of Mountain Water Company for Authority)	
to Increase Rates and Charges for Water Service)	DOCKET NO. D2005.4.49
to Its Missoula, Montana Customers)	ORDER NO. 6644

IN THE MATTER of the Application of)	UTILITY DIVISION
MOUNTAIN WATER COMPANY for Authority)	
to Decrease Rates and Charges for Water Service)	DOCKET NO. D2004.9.145
to Its Missoula, Montana Customers)	ORDER NO. 6650

**NOTICE OF CONSOLIDATION OF DOCKETS, NOTICE OF OPPORTUNITY FOR
PUBLIC HEARING, NOTICE OF COMMISSION ACTION ON MOTION FOR
INTERIM RATE ORDER, AND PROCEDURAL ORDER**

Introduction and Background

These dockets are consolidated for procedural purposes. Docket No. D2005.4.49 is a general rate case filed on April 8, 2005 by the Mountain Water Company (Mountain or Applicant), and noticed on April 15, 2005. Docket No. D2004.9.145 is an annual power cost adjustment tracker filing (tracker filing) submitted by Mountain on September 7, 2004, pursuant to tariff. This filing was noticed on September 20, 2004, and the rate change proposed in the filing was effective on an interim basis, by operation of the tariff, on October 1, 2004.

**Notice of Opportunity for
Public Hearing - Docket No. D2004.9.145**

Pursuant to the September 20, 2004 Notice of Application and Intervention Deadline the Montana Consumer Counsel (MCC) sought and was granted intervention in this docket. By this notice the MCC is advised of its opportunity to conduct discovery and submit testimony in this docket. Deadlines are as set forth in the Procedural Order below.

**Notice of Commission Action on Motion for Interim Rate Order -
Docket No. D2004.9.145**

At the request of Commission staff Mountain filed a Motion for Interim Rate Order in this docket on October 1, 2004. The Motion requested approval of the tracker filing rates on an interim basis effective October 1, 2004. The Commission has not acted on the Motion and now has denied the Motion as moot. Pursuant to its tracker tariff Mountain's tracker filing rates become effective automatically on an interim basis, unless ordered otherwise by the Commission. The Commission did not so order in this case and the tracker filing rates became effective on an interim basis by operation of the tariff on October 1, 2004. Commission staff was in error when it requested that Mountain file a motion for interim rate order.

**Supplemental Filing -
Docket No. D2005.4.49**

As necessary and if desired Mountain may file a supplement to its general rate case application requesting that its authority to implement a power cost tracker adjustment be extended beyond December 31, 2004, the sunset date approved in Order No. 6423b, Docket No. D2002.5.60.

PROCEDURAL ORDER

1. The Commission establishes the following procedure and schedule to be followed in these dockets. This Order is effective on the service date and remains effective unless modified by the Commission or its staff.

Schedule

2. All dates listed in the following schedule are receipt dates (filing and service) unless otherwise specified. The Commission and intervenors may direct discovery on Mountain Water in these dockets at anytime up to and including July 1, 2005. Mountain Water shall respond to discovery within ten (10) calendar days when the discovery is served on or before June 20, 2005. For discovery served after June 20, 2005, but on or before July 1, 2005, Mountain

Water shall respond by July 15, 2005, according to the schedule.

- a. June 10, 2005: Opportunity for Applicant to supplement its filing in D2005.4.49 to request an extension of its power cost adjustment tracker tariff.
- b. July 1, 2005: Deadline for discovery on the applications in these dockets;
- c. July 15, 2005: Deadline for Applicant responses to discovery;
- d. July 29, 2005: Deadline for intervenor Montana Consumer Counsel prefiled testimony in these dockets; Deadline for intervenor City of Missoula prefiled testimony in D2005.4.49;
- e. August 12, 2005: Deadline for discovery on intervenors' testimony;
- f. August 26, 2005: Deadline for intervenors' responses to discovery;
- g. September 9, 2005: Deadline for rebuttal testimony;
- h. September 19, 2005: Deadline for discovery on rebuttal testimony;
- i. September 29, 2005: Deadline for responses to discovery on rebuttal;
- j. October 6, 2005: Deadline for prehearing memoranda;
- k. October 12, 2005: Hearing begins.

3. In addition, satellite hearings and various pre-hearing conferences may be separately scheduled. Requests to change this schedule should be made after communication with other parties, may be made informally, and, unless requested changes require changing the hearing date, may be granted by commission staff.

Ex Parte Communications

4. This proceeding is a contested case proceeding. In contested case proceedings most *ex parte* communications are prohibited. An *ex parte* communication is one between (i.e., to or from) a Commissioner and any person associated with a party in the contested case, when the communication involves the contested case or an issue in the contested case and all other parties to the contested case have not been given a reasonable opportunity to participate in the

communication. PSC Commissioner receipt or conveyance of *ex parte* communications is prohibited by law. § 2-4-613, MCA. Party receipt or conveyance of *ex parte* communications is prohibited by law. *Id.* A few categories of *ex parte* communications, some pertaining to procedure and scheduling, may be allowed by law and are not prohibited (e.g., emergency motion for extension of time). *Id.* Any oral, written, electronic, or other form of communication of any kind, between (i.e., to or from) a PSC Commissioner and any person associated with any party to a contested case pending before the PSC may be or may include, inadvertently or otherwise, a prohibited *ex parte* communication. Parties and Commissioners being ever alert to this possibility, the prohibition applicable, and the corrective action necessary is extremely important in regard to any face-to-face, phone, letter, e-mail, or other encounter involving a party and a Commissioner.

Procedure

General

5. Unless otherwise stated in this Procedural Order the procedure governing this contested case is set forth in applicable provisions of: (a) Title 69, MCA, public utilities; (b) Title 2, Chapter 4, MCA, MAPA; (c) ARM Title 38, Chapter 2, procedural rules of the PSC; (d) tariffed procedures; and (e) previous Orders of the PSC bearing specifically on the procedure and issues in this docket, if any.

Service and Filing

6. Copies of all pleadings, motions, discovery requests, discovery responses, pre-filed testimony, briefs, and other documents shall be filed with the PSC and served on all parties ("parties" includes the utility and all intervenors). In the case of a filing directed to the PSC, such as motions, testimony, and briefs, the original and 10 copies shall be filed. Service upon the parties shall be upon each party's attorney of record and such other individuals as may be reasonably designated by the attorney of record. The parties may limit service of discovery responses to service on the party making the discovery request, the PSC (original and 10 copies, unless waiver is obtained), and parties specifically requesting service of discovery responses.

7. Service and filing by means of facsimile transmission is prohibited. Deadlines for

service and filing are deadlines for the service and filing of the original and copies as required.

Intervention

8. Parties seeking to intervene must file a Petition to Intervene with the PSC. So long as the time set for intervention as a matter of right is met, intervention shall be deemed granted subject to a later ruling on standing (if necessary). In the case of late intervention, the intervenor must: (a) identify the general position that the intervenor will take if the intervention is granted; (b) demonstrate a legally protectable interest directly affected by this docket; (c) demonstrate that the intervention, if granted, will not delay or prejudice the proceeding in this docket; and (d) good cause why the request for intervention was not timely filed. Late intervention will be effective only on action of the PSC. Timely intervention in Docket No. D2005.4.49 has been granted to the Montana Consumer Counsel and the City of Missoula; timely intervention in Docket No. D2004.9.145 has been granted to the Montana Consumer Counsel.

Discovery

9. The term "discovery" includes all forms of discovery authorized by rules of the PSC. The term "written discovery" as used in this order includes data requests. The PSC urges all parties to conduct discovery through the use of data requests as the preferred method of discovery.

10. The PSC directs all parties to prepare data requests according to the following guidelines:

- (a) Parties must assign their data requests a request number (e.g., MCC-001). Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through 008 to the utility, PSC-009 through 016 to an intervenor, and PSC-017 through 019 to the utility).
- (b) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number, page number, etc., may be included in

addition to, but not in lieu of, the subject of the request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

(c) Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d, and e). Requests must be limited to five (a-e) parts. If additional parts are necessary additional requests must be made. A single part request should be denoted by the request number only.

(d) Examples of acceptable data requests are as follows:

PSC-500 RE: Purchased Gas Contracts
Witness - Doe, Page JBD-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass
Witness - Roe, Page RAR-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

11. The party receiving the written discovery or data request has five business days from receipt to object. The objection and notice thereof shall be filed with the PSC and served on all parties. The PSC may dispose of objections by prompt ruling or may schedule arguments. Failure to timely object will be deemed acceptance of the request.

12. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to compel, must, within five business days after receipt of such response, file with the PSC and serve all parties the objection or motion and identify the relief requested. The PSC may dispose of such objection by prompt ruling or may schedule argument. The PSC will act to either sustain or overrule the objections. If an objection is

sustained, a time period will be set within which a satisfactory response must be made.

13. Submission of written discovery after the period established will be allowed by leave of the PSC only. Requests will not be permitted unless the party making the request shows good cause as to why the request was not submitted within the time period allowed.

14. Unless excused by the PSC, failure by a party to answer data requests or other discovery from any party may result in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony, or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding, or parts thereof.

Testimony and Evidence

15. The PSC contemplates a complete identification of issues prior to the time of hearing. Introduction of new issues or data in new areas at the time of hearing will be carefully scrutinized and will be subject to disallowance unless reasonably related to issues earlier identified in the application, pre-filed testimony, or proceedings.

16. At hearing, pre-filed direct, answer, and rebuttal testimony will be adopted into the record by motion of the proponent without the need of recitation by the witness. The testimony will be an exhibit and not otherwise entered into the transcript.

17. All proposed exhibits and pre-filed written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter and presiding officer for the preferred manner of identifying exhibits.

18. When cross-examination is based on a document, not previously filed with the PSC, copies of the document must be made available to each commissioner, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each commissioner, the PSC staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the PSC and all parties.

19. Parties may be permitted to present live rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or the testimony of a public witness. Such testimony will be allowed only by leave of the PSC or presiding officer.

20. Citizens and citizen groups will, in the discretion of the PSC, be allowed to make statements without having submitted prepared written testimony. In addition, if they have prepared written testimony they may read it if they desire, or they may have it adopted directly into the record.

21. The Montana Rules of Evidence in effect at the time of the hearing in this docket will govern at the hearing.

22. Any party to this proceeding having responded, itself or through agents, to written discovery from any other party or the PSC, shall have all persons authoring each response present and available as a witness at the hearing for the purposes of introduction of the discovery and cross-examination thereon. Reasonable alternatives to this requirement, such as waiver of objection to introduction absent the author and waiver of right to cross-examine, agreed to by the parties may be accepted if approved by the PSC. Written discovery (not including transcripts of depositions on oral examination) and data requests will not be introduced at hearing unless done in accordance with applicable rules of evidence and through an appropriate witness subject to cross-examination or upon stipulation approved by the PSC.

Pre-hearing Motions and Conferences

23. Motions by any party, including motions to strike pre-filed testimony and motions concerning any procedural matter connected with this docket, shall be raised at the earliest possible time. Pre-hearing motions shall be submitted on briefs unless otherwise requested by a party and approved by the PSC. If oral argument is granted, the party requesting oral argument shall, after scheduling with the PSC, notice the same for hearing before the PSC.

24. The PSC may, at any time prior to the hearing, set a pre-hearing conference for discussion of, among other things, the feasibility of settlement of any issues in the proceeding, the simplification of issues, the possibility of obtaining admissions of fact and documents, the

distribution and marking of written testimony and exhibits prior to the hearing, and such other matters as may aid in the disposition of the proceeding or settlement thereof.

25. Nothing in this Order shall be construed to limit the legally established right of the PSC or its staff to inspect the books and accounts of the utility at any time.

Pre-hearing Memorandum

26. The Pre-hearing Memorandum shall be from each party unless the parties agree to file jointly. It shall contain a list of all issues determined to be uncontested, all issues determined to be contested, witnesses intended to be called to testify or stand cross-examination, exhibits intended to be introduced, and discovery, to date, intended to be introduced at hearing. Identified responses to data requests to be introduced at hearing will be accompanied by a proper identification of the request, the witness responsible for the response, and the issue to which it relates. Any special needs to accommodate witness sequence or scheduling should be identified in the Pre-hearing Memorandum.

Open Meetings

27. All PSC meetings regarding this docket are open meetings except as otherwise required or permitted by law. Parties will not routinely be notified of PSC business meetings or work sessions that may pertain to discussion or action on matters within this docket. Notification of PSC work sessions concerning this docket will be provided to all persons requesting notification through the PSC's weekly agenda mailing list.

Done and dated this 24th day of May, 2005.

BY THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGSON, Chairman
BRAD MOLNAR, Vice-Chairman
DOUG MOOD, Commissioner
ROBERT H. RANEY, Commissioner
THOMAS J. SCHNEIDER, Commissioner

NOTE: The Commission, on its own motion or at the request of a party, may reconsider elements of this Order at any time up to and including the hearing. Applicable Commission rules at ARM 38.2.4806 are waived as necessary.